Docket No.: M1100.70002US00
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Gabrio Roncucci et al.
Serial No.:	10/532,278
Confirmation No.:	8497
Filed:	April 21, 2005
For:	MESO-SUBSTITUTED PORPHYRINS
Examiner:	P. V. Ward
Art Unit:	1624

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Dated: June 16, 2008 (Trish McDonald)

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Election of Species Requirement set forth in the Office Action mailed April 14, 2008. In the Action, the Patent Office indicates that the Application contains claims directed to patentably distinct species defined as: metalloporphyrins, heteroaryls and porphyrins. The Patent Office states that the species are independent and distinct, and that Applicant is required under 35 USC §121 to elect a single disclosed species for prosecution on the merits.

Applicants hereby elect the species "porphyrins" for continued prosecution, with traverse.

The traversal is based on the fact that the Patent Office has applied an improper standard for restriction in the present application. The present application is a National Stage Application

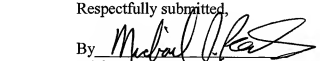
The present application is a National Stage Application submitted under 35 USC §371. While in the Office Action, a standard for restriction and election of species enumerated in 37 CFR §1.141-1.146 appears to have been applied, the Applicants respectfully point out that unity of invention, and not restriction practice pursuant to 37 CFR §1.141-1.146, is the proper standard for national stage applications submitted under 35 USC §371. For the present application, which is a U.S. National Stage Application submitted under 35 USC §371, the Patent Office is required to show that the application lacks unity of invention under 37 CFR §1.475, which corresponds to PCT Rule 13. Such a showing requires, *inter alia,* that the Patent Office must establish why each species lacks unity with respect to each other species (i.e., why there is no single general inventive concept), specifically describing unique special technical features of each species that define the contributions which each makes over the prior art. (See, e.g., MPEP §1893.03(d).) No such showing or explanation is presented in the Office Action. Accordingly, the basis upon which the present Election of Species Requirement is made is not proper, and the requirement should be withdrawn.

The requirement also indicates that the Applicant must indicate which claims are readable upon the elected species. Claims which do not include any limitation believed to preclude them from reading on the elected species of porphyrin and which are commensurate with the above election are each of pending claims 1-10, 15, 16 and 19-24. In other words, none of the presently pending claims include any limitations that would preclude them from reading upon a "porphyrin."

An action on the merits is respectfully requested.

Dated: June 16, 2008

Respectfully submitted,

By 

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